IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04..9..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. No.7678 of 1998

S.Ramaswamy :: Petitioner

vs.

1. The Management of Canara Bank
Rep. by its Chairman and Managing Director
Head Office
No.112 J.C. Road
Bangalore 560 002

2. General Manager
Personnel Wing, Head Office
Canara Bank
No.112 J.C. Road
Bangalore 560 002

3. Deputy General Manager
Disciplinary Action Cell
Circle Ofice
Canara Bank
St. Mary's Complex
East Veli Street
Madurai 625 001 :: Respondents

Petition filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorarified Mandamus to call for the records from the respondents 2 and 3 in Ref. No.MDUC DAC 764 F112 dated 31.5.1997 and Ref. No.MDUC:DAC:1675 B119 97-98 dated 02.02.1998 respectively and quash their impugned orders and direct the respondents to reinstate the petitioner in service with continuity of service, with back wages and with all other attendant and consequential benefits.

For Petitioner : Mr.K.M.Ramesh

For Respondent : Mr.P.R.Raman

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

O R D E R

The petitioner in this writ petition seeks to challenge the order of the second respondent appellate authority dated 02.02.1998 confirming the order of the third respondent dated 31.5.1997 wherein and by which the petitioner was dismissed from service.

2. The petitioner was employed as the Agriculture Extension Officer in the respondent Bank on 02.8.1982. While he was working as Agriculture Extension Officer at Tirumangalam Branch, he was issued with an order of suspension dated 25.10.1995, which was followed by a charge sheet dated 31.01.1996. There were three charges in the charge sheet. The first charge contains four sub-charges. The substance of the charges under Articles 1.I and III relates to his alleged demand and acceptance of illegal gratification from various parties for processing and sanctioning of Intensive Rural Development Programme Loans [for short, 'IRDP']. The charge 1.II (a) and (b) relates to the demand of commission and bribe from two parties, viz., one from the dealer and the other from the borrower respectively towards tractor loan. Charge No.2 relates to the allegation of receipt of money from a borrower towards tractor loan and misappropriation of the same. The party concerned in charge 1.II (a) and charge 2 are one and the same person, viz., Raju Thevar. Charge No.3 relates to causing issuance of anonymous printed notice in filthy language with a view to tarnish the image of the Bank, its staff and customers. The charge sheet contains list of 22 witnesses and 11 documents. Since the documents in support of the charges were not furnished, the petitioner denied the charges in an one line explanation. An Enquiry Officer was appointed in terms of Regulation 6(2) of the Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 [for short, 'Regulations'] and also a Presenting Officer was appointed. In the departmental enquiry, only 12 witnesses were examined and two Management witnesses, viz., M.W.10 and M.W.11, were declared hostile and even the witness M.W.12 went back on his statement and stated in the enquiry that the signatures / thumb impressions in the complaint statements were obtained from the officers under false promise of grant of loan. The above said three witnesses were illiterate persons and they also denied that they have never made any complaint with the respondent Bank regarding the demand of bribe by the petitioner and have also stated that they never paid any money to the petitioner. The Presenting Officer himself declared M.W.10 and M.W.11 as hostile and cross-examined them. M.W.1 was the Investigation Officer and M.Ws. 2, 3, 6, 7, 8 and 9 were Officers of the Bank. Only M.Ws.4, 5 and 10 to 12 are outsiders. On the side of the petitioner, he had examined one Sivan Rajan, who was supposed to have given oral complaint to the Bank. On the basis of the evidence, the Enquiry Officer found the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

petitioner guilty of the charges. By a letter dated 21.12.1996, the petitioner was given a memo to submit his explanation against the findings rendered by the Enquiry Officer and notwithstanding the petitioner's explanation, by an order dated 31.5.1997 passed by the third respondent, the petitioner was dismissed from service and his further appeal was rejected by the second respondent by proceedings dated 02.02.1998 as stated already. It is against this order, the present writ petition has been filed.

3. I have heard the arguments of Mr.K.M.Ramesh, learned counsel appearing for the petitioner and Mr.P.R.Raman, learned counsel appearing for the respondents and have perused the records.

4. Mr.K.M.Ramesh, learned counsel appearing for the petitioner submitted that the enquiry held by the Bank was vitiated. Though the Bank relied upon 22 witnesses, most of them were not examined and three witnesses have turned hostile, which factor was not considered and even the evidence given on behalf of the workman were not taken into account. In support of his submission, the learned counsel relied upon the judgment of the Supreme Court in its decision reported in 2001 (1) SCC 65 [Union of India v. K.A.Kittu and others] and submitted that the action of the Tribunal in going into the findings rendered by the domestic enquiry officer and finding of the contradictions was upheld by the Supreme Court and, therefore, this Court must hold that the findings are perverse and not supported by materials on record. It must be seen that the said judgment does not lay down any proposition of law and merely, the Supreme Court upheld the orders of the Tribunal.

5. Thereafter, the learned counsel relied upon the judgment of the Supreme Court reported in 1999 (2) SCC 10 [Kuldeep Singh v. Commissioner of Police and others]. The learned counsel, more particularly, relied upon the passages found in paragraphs 39 and 42 of the judgment, which read as follows:

Para 39: "From the findings recorded separately by the Deputy Commissioner of Police, it would appear that there is a voucher indicating payment of Rs 1000 to Rajpal Singh, one of the labourers, on 8.2.1990. This document was not mentioned in the charge-sheet in which only two documents were proposed to be relied upon against the appellant, namely, copy of the report of SHO Lajpat Nagar dated 5-3-1990 against the appellant and the copy of the labourers' statement. This document has, therefore, to be excluded from consideration as it could not have been relied upon or even referred to by the Deputy Commissioner of Police."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Para 42: "The enquiry officer did not sit with an open mind to hold an impartial domestic enquiry which is an essential component of the principles of natural justice as also that of "reasonable opportunity", contemplated by Article 311(2) of the Constitution. The "bias" in favour of the Department had so badly affected the enquiry officer's whole faculty of reasoning that even non-production of the complainants was ascribed to the appellant which squarely was the fault of the Department. Once the Department knew that the labourers were employed somewhere in Devli Khanpur, their presence could have been procured and they could have been produced before the enquiry officer to prove the charge framed against the appellant. He has acted so arbitrarily in the matter and has found the appellant guilty in such a coarse manner that it becomes apparent that he was merely carrying out the command from some superior officer who perhaps directed "fix him up".

6. Per contra, Mr.P.R.Raman, learned counsel appearing for the respondent Bank relied upon the judgment of the Supreme Court reported in AIR 1963 SC 1723 [State of Andhra Pradesh and others v. S.Sree Rama Rao]. He drew the attention of this Court to paragraphs 7 and 8 of the said judgment, which are extracted below:

Para 7: "There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition I ... under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.

Para 8: "The Enquiry Officer had accepted the evidence of witnesses for the State that Durgalu was handed over to the respondent on March 5, 1954 and the observation that the respondent may have the benefit of doubt if the judgment of the Magistrate is considered "sacred truth" appears to have been made in a somewhat sarcastic vein, and does not cast any doubt upon the conclusion recorded by him. The enquiry officer appears to have stated that the judgment of the Magistrate holding a criminal trial against a public servant could not always be regarded as binding in a departmental enquiry against that public servant. In so stating the enquiry officer did not commit any error. The first ground on which the High Court interfered with the order of the punishing authorities is therefore wholly unsustainable."

7. He further submitted that the above said judgment came to be followed in the decision of the Supreme Court reported in 2006 (2) SCC 584 [South Bengal State Transport Corporation v. Sapan Kumar Mitra and others] and paragraphs 14 and 16 of the said judgment read as follows:

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Para 14: "Applying the principles laid down by the Constitution Bench, it cannot be denied that the learned Single Judge was justified in sending the case back to the disciplinary authority and ordering him to supply a copy of the inquiry report along with the report of the District Magistrate and other documents relied upon by him to Respondent 1 and thereafter to proceed from that stage after seeking comments on those reports from Respondent 1 to reach a fresh conclusion. We are of the view that at the appellate stage, the Division Bench was not justified to short cut the procedure by going into the merits on the question of removal from service of Respondent 1 particularly when the learned Single Judge had not decided the case of Respondent 1 on the question of removal on merits and when the disciplinary authority had passed the order of removal practically relying on the inquiry report, a copy of which was not supplied to Respondent 1 for filing comments. It is well settled that the inquiry officer and disciplinary authority are the sole judges of facts. Adequacy and reliability of the evidence is not a matter that can be canvassed before a High Court in a writ proceeding under Article 226 of the Constitution."

Para 16: "In any view of the matter, the grounds on which the Division Bench had set aside the judgment of the learned Single Judge and the order of removal and quashed the departmental proceeding as referred to herein earlier, were not open to it in the exercise of their supervisory power under Article 226 of the Constitution. One of the many grounds to quash the departmental proceedings was that since in the list of documents that was attached to the charge-sheet, the report of the District Magistrate was not mentioned, no reliance could be placed on the said report of the District Magistrate and therefore the order of removal that was passed relying on the said report was liable to be set aside and the order of reinstatement must be passed without any further inquiry. Furthermore, according to Respondent 1, since the original copy of the inquiry report was not filed and only a xerox copy of the same was filed, such xerox copy could not at all be taken into consideration for the purpose of passing the order of removal of Respondent 1. It is well-settled position now that the disciplinary authority or the inquiry officer are not courts and therefore the strict procedures that are to be

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

followed in courts may not be strictly adhered to. In B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749] it has been laid down by this Court that in a departmental proceeding, the strict proof of legal evidence and findings on that evidence are not relevant. Apart from that, in view of our directions made herein earlier, that is, when the copies of the documents have been directed to be supplied by the learned Single Judge and thereafter proceeding will continue, it was not at all necessary for the Division Bench to decide this issue as was wrongly done by it."

8. The learned counsel appearing for the respondent Bank also relied on the decision of the Supreme Court reported in 2006 (6) SCC 325 [Amrit Vanaspati Co. Ltd. v. Khem Chand and another] and reliance was placed upon the following passage found in paragraph 9.

Para 9: "..... This apart, the High Court while exercising powers under the writ jurisdiction cannot interfere with the factual findings of the Labour Court which are based on appreciation of facts adduced before it by leading evidence. In our opinion, the High Court has gravely erred in holding that the evidence of Respondent 1 was not considered by the Labour Court and had returned the finding that the evidence of Respondent 1 did not inspire any confidence. We are of the opinion that the High Court is not right in interfering with the well-considered order passed by the Labour Court confirming the order of dismissal."

9. Thereafter, the learned counsel took this Court to the minutes of the enquiry as well as the findings of the Enquiry Officer and submitted that the Enquiry Officer has given chosen reasons in treating the two witnesses in question, hostile because they went back on the original written statement to the Bank and those witnesses have been secured by the petitioner. The petitioner was given opportunity to explain against the findings rendered in the domestic enquiry and his explanation was also considered by the disciplinary authority before passing the impugned order. In fact, while giving the findings in the domestic enquiry, the Enquiry Officer was conscious that the customers gave a written complaint and they were collected by the Investigation Officer and, therefore, he placed no reliance upon the written statement when the conduct of the witnesses reciling from their statements. In respect of each head of charge, chosen reasoning has been given by the Enquiry Officer. Even if the finding relating to the circulation of printed material was based upon the hear say evidence and even if that charge is excluded, the other charge relating to demand of bribe and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

acceptance of illegal gratification is such a serious charge. The Bank being public sector Bank and in the position of Officer, customers are fiduciary in character and, therefore, this Court cannot show any leniency in favour of the petitioner. Only when the findings are perverse, the question of judicial review may arise to interfere with the findings rendered in the departmental enquiry. In the present case, no such occasion has arisen for this Court to interfere with the findings rendered by the Enquiry Officer.

10. In the above circumstances, the writ petition is devoid of merits and accordingly, dismissed. However, there will be no order as to cost.

gri

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chairman and Managing Director
   Canara Bank
   Head Office
   No.112 J.C. Road
   Bangalore 560 002.

2. The General Manager
   Personnel Wing, Head Office
   Canara Bank
   No.112 J.C. Road
   Bangalore 560 002

3. The Deputy General Manager
   Disciplinary Action Cell
   Circle Ofice
   Canara Bank
   St. Mary's Complex
   East Veli Street
   Madurai 625 001

4. The Section Officer,
   VR Section, High Court,
   Madras.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

+ 1 cc to Mr. P. R. Raman, Advocate, SR No.55310

+ 1 cc to Mr. K.M. Ramesh, Advocate, SR No.54997

KK(CO)
SR/10.9.2007 order in

W.P. No.7678 of 1998

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/